

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 DAVID DANIELS,

11 Plaintiff,

12 v.

13 MICHAEL WAYMAN, THOMAS
14 L'HEUREUX,

15 Defendants.

CASE NO. 3:19-CV-6079-RJB-DWC

ORDER

16 Plaintiff David Daniels, proceeding *pro se* and *in forma pauperis*, filed this civil rights
17 complaint under 42 U.S.C. § 1983. The District Court has referred this action to United States
18 Magistrate Judge David W. Christel. Presently pending in this action are Plaintiff's: (1) Motion
19 for Leave to File Amended Complaint ("Motion to Amend," Dkt. 11) and (2) Motion to Appoint
20 Counsel (Dkt. 12). The Court grants Plaintiff's Motion to Amend (Dkt. 11) and directs Plaintiff
21 to file an amended complaint on or before January 26, 2020. The Court denies Plaintiff's Motion
22 to Appoint Counsel (Dkt. 12) without prejudice.
23
24

1 **1. Motion to Amend (Dkt. 11)**

2 Plaintiff moves for leave to amend his complaint to add claims and factual allegations.

3 Dkt. 11. Plaintiff also seeks to addresses for several defendants. *Id.*

4 Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,

5 **(1) *Amending as a Matter of Course***

6 A party may amend its pleading once as a matter of course within:

7 (A) 21 days after serving it, or

8 (B) if the pleading is one to which a responsive pleading is required,
9 21 days after service of a responsive pleading or 21 days after service
10 of a motion under Rule 12(b), (e), or (f), whichever is earlier.

11 **(2) *Other Amendments***

12 In all other cases, a party may amend its pleading only with the
13 opposing party's written consent or the court's leave. The court
14 should freely give leave when justice so requires.

15 The Motion to Amend is Plaintiff's first motion and he has not previously amended his
16 Complaint in this case. Plaintiff filed the Motion to Amend before the Complaint was served and
17 prior to Defendants' filing of a responsive pleading or motion under Rule 12(b). *See* Dkt.
18 Therefore, Plaintiff has the right to amend his Complaint as a matter of course pursuant to Rule
19 15(a)(1)(B). *See Trudeau v. Direct Marking Concepts, Inc.*, 90 Fed. Appx 486 (9th Cir. 2003)
20 (finding the plaintiff was allowed to amend his complaint as a matter of right when the motion to
21 amend was filed before the defendant filed a responsive pleading). Accordingly, Plaintiff's
22 Motion to Amend (Dkt. 11) is granted.

23 Plaintiff has not attached a proposed amended complaint to his Motion to Amend. He has
24 only briefly described the supplemental claims he wishes to add to his Complaint. *See* Dkt. 11.
25 To amend his Complaint, Plaintiff must file an amended complaint on the form provided by the
26 Court. The amended complaint must be legibly rewritten or retyped in its entirety, it should be an
27 original and not a copy, it should contain the same case number, and it may not incorporate any

1 part of the Complaint by reference. The amended complaint will act as a complete substitute for
2 the Complaint, and not as a supplement. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
3 1992).

4 The Court reminds Plaintiff, under Federal Rule of Civil Procedure 8, a complaint must
5 contain “a short and plain statement of the claim showing the pleader is entitled to relief,” and
6 “[e]ach averment of a pleading shall be simple, concise, and direct.” Fed. R. Civ. P. 8(a)(e).
7 Within the amended complaint, Plaintiff must write a short, plain statement telling the Court: (1)
8 the constitutional right Plaintiff believes was violated; (2) the name of the person who violated
9 the right; (3) exactly what the individual did or failed to do; (4) how the action or inaction of the
10 individual is connected to the violation of Plaintiff’s constitutional rights; and (5) what specific
11 injury Plaintiff suffered because of the individual’s conduct. *See Rizzo v. Goode*, 423 U.S. 362,
12 371–72, 377 (1976).

13 If Plaintiff fails to file an amended complaint by January 26, 2020 the Court will proceed
14 on Plaintiff’s Complaint. The Clerk is directed to send Plaintiff the appropriate forms for filing a
15 42 U.S.C. § 1983 civil rights complaint.

16 **2. Motion to Appoint Counsel (Dkt. 12)**

17 Plaintiff moves for the appointment of counsel. Dkt. 12. Plaintiff alleges he is unable to
18 afford counsel, his imprisonment greatly limits his ability to litigate this matter, the issues
19 involved are complex, a trial will involve conflicting testimony, and he has limited knowledge of
20 the law and limited access to the law library. Dkt. 12.

21 There is no constitutional right to appointed counsel in a § 1983 civil action, and whether
22 to appoint counsel is within this Court’s discretion. *Storseth v. Spellman*, 654 F.2d 1349, 1353
23 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir.

1 1995). Appointment of counsel for indigent civil litigants under 28 U.S.C. § 1915(e)(1) requires
2 “exceptional circumstances.” *See Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997) (citing
3 former 28 U.S.C. § 1915(d) (1996)), *overruled on other grounds*, 154 F.3d 952 (1998). To
4 decide whether exceptional circumstances exist, the Court must evaluate “both ‘the likelihood of
5 success on the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of
6 the complexity of the legal issues involved.’” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th
7 Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). “Neither of these
8 factors is dispositive and both must be viewed together[.]” *Id.*

9 Plaintiff has not shown the exceptional circumstances necessary to warrant the
10 appointment of counsel. As stated above, the Court grants Plaintiff’s Motion to Amend (Dkt. 11).
11 However, Plaintiff has not yet filed an amended complaint, which will be subject to screening by
12 the Court. *See* 28 U.S.C. § 1915. Thus, at this early stage, the Court is not able to discern
13 whether plaintiff’s amended complaint presents a claim that is cognizable under § 1983 or
14 plaintiff’s likelihood of success. For this reason and because at present, the facts and legal issues
15 do not appear unusually complex such that plaintiff could not articulate his claims *pro se*, the
16 Court finds that plaintiff has not shown the exceptional circumstances required for the
17 appointment of counsel.

18 Plaintiff’s Motion to Appoint Counsel (Dkt. 12) is therefore denied as premature and
19 without prejudice.

20 Dated this 26th day of December, 2019.

21 

22 _____
23 David W. Christel
24 United States Magistrate Judge